



P/35-4 CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: M. Krysiak

Serial No.: 09/769,076

Group Art Unit: 3643

Filing Date: January 25, 2001

Examiner: A. Valenti

For: COLORED AND FRAGRANCED
HORTICULTURAL/
AGRICULTURAL PRODUCTS

Dated: May 7, 2002

Assistant Commissioner for Patents
Washington, DC 20231

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RESPONSE TO OFFICE ACTION

GROUP 3600

Sir:

The following is in response to the Office Action mailed November 7, 2002.

Applicant affirms the election of claims without traverse to prosecute the invention of colored and fragranced mulch, claims 26-45, 47, and 50.

Please cancel Claims 31, 33, 34, 35, 43 and 44. Enclosed herewith is a marked-up and clean copy of the claims as amended.

The Examiner has stated that Claims 27-30, 36-38 and 40-42 are objected to because of informalities. The claims have been amended accordingly.

The Examiner has rejected Claim 34 under 35 U.S.C. 112, second paragraph, as being indefinite because Applicant's and/or combination renders the claim vague and indefinite. It is not clear to the Examiner whether the applicant intends to claim the alternative glycerin or water in combination with colorant or if applicant intends to claim glycerin alone alternatively to water and colorant. Applicant has cancelled claim 34.

The Examiner has rejected claims 26-33, 35-38, 47, and 50 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,252,785 to Hoblit.

Regarding claims 26, 33, and 47, the Examiner states that Hoblit discloses a colored mulch product consisting essentially of a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same; a binding agent; an environmentally friendly dye and/or pigment and the colored mulch product is produced by an agglomeration operation.

The claims have been amended to add the language that the dye indicate to a user the environmental conditions of the soil where the mulch is placed. The colored mulch of Hoblit is comparatively water insoluble and is relatively chemically inert, entering into no reactions with the plant nutrients or pesticides. Therefor it is the object and purpose of Hoblit for the colored mulch product to remain the same color and not to change colors based on the environmental conditions.

Regarding claims 27 and 50, the Examiner states that Hoblit discloses NPK fortifiers and the colored mulch inherently fades or disappears in response to a lack of nutrient or fertilizer in the mulch.

Based on the amendment to claim 26, Hoblit does not teach that the dye indicates to a user environmental conditions of soil where said mulch is placed. Further, regarding claim 50, Hoblit does not teach a colored mulch product where the color fades or disappears in response to a lack of nutrient or fertilizer in the mulch.

Regarding claims 28, 29, and 30, the Examiner states that the mulch taught by Hoblit inherently assists a user in determining the acidity of soil, the moisture content of soil, the chemical content of soil since the dye will inherently change shades once applied

to the soil surface as a result of environmental influences that are proportional to the acid, moisture, and chemical characteristics of the soil.

Regarding claims 28, 29, and 30, Hoblit teaches that the colored mulch is comparatively water insoluble and is relatively chemically inert, entering into no reactions with the plant nutrients or pesticides. Therefor it is the object and purpose of Hoblit for the colored mulch product to remain the same color and not to change colors based on the environmental conditions. Therefor Hoblit does not inherently assists a user in determining the acidity of soil, the moisture content of soil, the chemical content of soil since the dye does not change shades once applied to the soil surface as a result of environmental influences that are proportional to the acid, moisture, and chemical characteristics of the soil.

Regarding claim 32, the Examiner states that the dye of Hoblit is inherently florescent since all colors to some extent fluorescence when exposed to UV light.

Regarding amended claim 32, applicant has amended the claim to require that the mulch glows in the dark. This is not taught by Hoblit or any of the other prior art references, nor is it obvious. A glow in the dark mulch allows the user to view the planted seed beds at night without the use of expensive equipment.

Regarding claims 36 and 37, the Examiner states that the mulch taught by Hoblit inherently assists the seed in absorbing heat and reflects sunlight based on old and well-known heat transfer fundamentals. In other words, the mulch provides a protective heat retaining layer for the solid and the darker the color of the mulch the more heat it will absorb since the emissivity of the mulch approaches one and thus providing more available heat for the seed. Furthermore, the mulch will inherently reflect sunlight since

the color of the mulch determines the absorbed wavelengths and unless it is completely black the mulch will inherently reflect some amount of light.

Regarding amended claims 36 and 37, claim 36 requires a black or darker dye which will heat the soil when it is exposed to sun light. Hoblit does not suggest or teach using a dark or black dye to assist the mulch in providing heat to the soil. Further claim 37 requires a white or light dye which reflects the sunlight. The Examiner states that the mulch taught by Hoblit inherently provides heat to the soil and also reflects some amount of light. However, the present invention teaches that when a user uses a dark or black color for the mulch it absorbs the heat, and when a user uses a light or white dye the mulch reflects the light. The Examiner states that the same mulch does both which is not claimed by the present invention.

Regarding claim 38, the Examiner states that Hoblit teaches that the mulch is the same or similar color of an actual plant, flower, fruit or vegetable of a seed planted with the mulch.

Hoblit does not teach that the color of the mulch is the same or similar color to the actual plant, flower, fruit or vegetable of a seed planted with the mulch. The advantage of this is that a user can now identify the color of the flowers that will bloom, before the seeds actually flower. They can assist a user in determining the best color scheme for their garden without having to actually grow the flowers and decide to then rearrange the garden.

Hoblit relates to providing a product having a uniform attractive color. The colored mulch is purely for aesthetic reasons. So that the finished product is appealing to

the eye and is easily discernable when applied to the lawn, a coloring agent is desirably incorporated and numerous dyes and pigments have been successfully employed.

The Examiner has rejected Claims 39-45 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,105,577 to Gary W. Hedges.

Regarding claims 39, 40, 41 and 42, the Examiner states that Hedges discloses a fragranced mulch comprising mulch product and a fragrance. Furthermore, Hedges fragrant mulch inherently assists a user in determining the acidity of soil, moisture content of soil, chemical content of soil since the fragrance will inherently change once applied to the soil surface as a result of environmental influences that are proportional to the acid, moisture, and chemical characteristics of the soil.

Regarding claims 43, 44, and 45, the Examiner states that Hedges discloses that the fragrance is selected from a group consisting of a floral fragrance, a natural fragrance or cocoa, the fragrance is inherently approved for use in products directly applied to the skin since many household soaps and detergents have pine, lemon, and cinnamon odor additives, and the fragrance provides a scent, which can take on a scent similar to a scent of a product applied.

Hedges relates to artificial mulching chips having a specific gravity greater than 1 formed from various plastics. The surface of the chip is embossed with a design providing additional surface area, facilitating diffusion to surrounding environment of fugitive active ingredients when the same are contained therein, including, for example, animal repellants, insecticides, or odorants. In an embodiment, the chips are made from thermoplastic material, embossed and colored to simulate bark chips from a tree.

One aspect of Hedges is to provide chip-like mulches that can be formed to include fugitive active agents which impart pleasing scents to the mulches and which can act as repellants to unwanted animal life. Hedges discloses mulch chips formed to include odorant materials, for example, pine scent, lemon scent, cinnamon, or other fragrances of the kind that tend to make an area more pleasant.

Another aspect of Hedges is to provide chip-like mulches which resist being displaced by runoff water and which possess pleasing colors.

Amended claims 39-45 require that the fragrance indicates to the user environmental conditions of the soil where the mulch is placed. Hedges does not describe that the fragrance of the mulch change to indicate conditions of the soil to the user. In fact Hedges states that the fragrance is a pleasing scent, and that it resists being displaced by runoff water. The object of Hedges is to provide a mulch chip that has its pleasant scent remain. If the scent were to change a user would throw it out. With regards to claim 45, the fragranced mulch assists a user determine the aroma of the flower which will come when the flowers bloom. This is important when a user is planting a variety of flowers to determine if one fragrance will predominate another fragrance or not provide the wanted scents.

The Examiner has rejected Claim 34 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,252,785 to Hoblit in view of U.S. Patent No. 4,932,156 to Underwood.

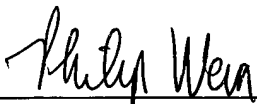
Regarding claim 34, the Examiner states that Hoblit teaches water and a dye, but is silent on the dye comprising glycerin. However, Underwood teaches the importance of glycerin in dye for mulch. It would have been obvious to one of ordinary skill in the art

to use glycerin in the dye since Underwood teaches that glycerin is an old and well-known dye component used to achieve desired color intensity.

Applicant has cancelled claim 34.

Applicant now believes the application is in condition for allowance.

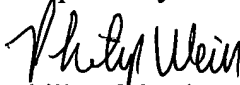
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Respectfully submitted,



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